

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**DAVID ALLEN TEBBETTS and
CYNTHIA INGRAM TEBBETTS,**

Plaintiffs,

v.

**BLUE CROSS BLUE SHIELD OF
ALABAMA; CARECORE
NATIONAL, LLC; and JANE
DOE 1-10,**

Defendants.

Case Number 2:07-cv-00925-MEF

**MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT AND
MOTION TO STRIKE JURY DEMAND**

COMES NOW defendant CareCore National, LLC (“CareCore”), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and hereby joins in defendant Blue Cross and Blue Shield of Alabama’s Motion to Dismiss Plaintiffs’ Complaint or, in the Alternative, Motion for Summary Judgment and Motion to Strike Jury Demand, and Blue Cross and Blue Shield of Alabama’s Brief in Support thereof. As grounds for this motion, CareCore adopts and incorporates the arguments asserted by Blue Cross and Blue Shield of Alabama (“Blue Cross”) in their motion and supporting brief, including the arguments that plaintiffs’ Complaint is due to be dismissed, or alternatively, that defendants are entitled to summary judgment, because all of

plaintiffs' claims are governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and are preempted in their entirety. *See* 29 U.S.C. §§ 1132, 1144. Also, plaintiffs' jury demand is due to be stricken because jury trials are not available in this circuit for ERISA-governed claims.

WHEREFORE, THE PREMISES CONSIDERED, CareCore respectfully requests that this Court enter an Order dismissing plaintiff's Complaint, or alternatively, that this Court enter a summary judgment in favor of defendants. CareCore also requests that plaintiffs' jury demand be stricken. CareCore does not oppose this Court granting plaintiffs leave to replead a claim for relief under ERISA.

Respectfully submitted,

/s/ Bruce F. Rogers

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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